Supreme Court, U.S.
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No._____

In The

Supreme Court of the United States

October Term, 1996

DOUGLAS L. NICHOLSON, ESQ.,
Petitioner,

v.

STATE BAR OF NEVADA
Respondent.

On Petition For Review
To The Supreme Court Of Nevada

PETITION FOR WRIT OF CERTIORARI

Douglas L. Nicholson, Esq.
537 E. Sahara Avenue, Ste. 209
Las Vegas, Nevada 89104
(702) 792-6671

In Proper Person

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68 pp

For each question below, the State Bar of Nevada (hereafter State Bar) shall collectively mean and include: the State Bar's Board of Governors, Board of Bar Examiners, and the Committee on Moral Character and Fitness (Committee); and the State of Nevada; and for Question 1 A), the People of the State of Nevada:

QUESTION NUMBER 1

Whether the State Bar discriminated against, and violated petitioner's: a) Privileges and Immunities, Right to Due Process (Procedural), and Right to Equal Protection guaranteed to him under § 1 of the Fourteenth Amendment to the Constitution of the United States, and/or Right to Due Process and Equal Protection under 42 U.S.C. 1983, 1985; b) Right of Assembly (Freedom of Association) guaranteed to him under the First Amendment to the Constitution of the United States; c) Privileges and Immunities in § 2 ¶ 1 of Article IV of the Constitution of the United States, and d) Right to Interstate Travel under the Commerce Clause in Article I § 8 clause 3 of the Constitution of the United States, in denying the petitioner's Nevada bar application *"with prejudice* **(can never apply again)** *to the State Bar of Nevada,"* especially considering that **petitioner had applied as a licensed attorney in the states of California and Louisiana, *and had in fact PASSED THE BAR EXAM***, for the following:

> A) Forcing petitioner to appeal from the State Bar's Recommendations to a Nevada Supreme Court whose morals, ethics, and values have been seriously questioned in the news media for the last several years, and again recently by its former court administrator of ten (10) years when sending a May 14, 1997 letter to Nevada State Legislators, stating therein that three of the five Supreme Court Justices are, "the most ruthless, dishonest, manipulative group of people I have ever known," and expecting or believing that petitioner's Petition For Review (appeal) would be given fair and impartial consideration under the laws of the State of Nevada, the Constitution of the State of Nevada, the laws of the United States, and the Constitution of the United States?

B) With regard to the Committee hearings, failing to provide Petitioner with: 1) timely notice prior to both hearings; 2) adequate subject matter notice for both hearings; and further, by 3) conducting the first hearing less than two weeks before the bar exam; 4) failing to communicate with the petitioner after the bar exam and prior to the swearing-in date; 5) impaneling a fifth committee member at the second hearing; 6) requiring petitioner to pay $750 in advance before there would be a first hearing; and 7) failing to offer petitioner legal representation at the hearings, knowing that he could not afford legal representation at the time?

C) The Committee submitting its Summary of Hearing and Recommendations (hereafter, Recommendations) to the Nevada Supreme Court (Supreme Court hereafter) recommending that, "the Applicant be denied with prejudice to the State Bar of Nevada," which Recommendation: 1) distorted facts; 2) selected facts supportive of only the State Bar's Recommendation, and ignored irrefutable facts supportive of a favorable Recommendation; 3) discounted or ignored the petitioner's testimony at both hearings; **4) was insupportable in fact and law, devoid of any substantive authority**; and 5) when sent to petitioner, did not include copies of the transcripts of the hearings upon which the Recommendation relied so that petitioner could fairly prepare an appeal therefrom?

D) Delaying: 1) the second hearing until after the swearing-in ceremony for new admittees; 2) the Order by the Supreme Court for the State Bar to answer petitioner's Petition for Review for almost nine (9) months, despite two motions to expedite by petitioner; and 3) the decision by the Supreme Court for over one (1) year from the filing date of Petition For Review, when the Supreme Court has original and exclusive jurisdiction over the admission of attorneys to the Bar, and such important constitutional rights were at stake?

E) In consideration of the number and gravity of constitutional issues appealed to the Supreme Court, its issuing an unreportable ORDER denying petitioner's application without addressing **one single substantive issue on the merits**, instead of rendering a reportable OPINION for publication, reflecting that the Supreme Court abandoned its obligation to review this petitioner's application **"de novo,"** and "protected itself, and the Bar Association that it regulates, from public scrutiny as to how this **attorney petitioner** was discriminated against.....AND the Supreme Court Justice to whom the case was assigned, and who authored the Order, is all the while "shrouded in anonymity?"

F) In the Committee recommending, and the Supreme Court Ordering, that petitioner's application to practice law in the State of Nevada be denied **WITH PREJUDICE**, ***meaning that petitioner can never reapply for admission to the Nevada Bar, tantamount to permanent disbarment of an attorney/applicant who had in fact passed the bar exam?***

QUESTION NUMBER 2

Whether the State Bar violated petitioner's: a) Privileges and Immunities in § 2 ¶ 1 of Article IV of the Constitution of the United States; b) Privileges and Immunities, Right to Due Process (Substantive, Right to Privacy), and Right to Equal Protection as guaranteed under §1 of the Fourteenth Amendment, and) Civil Rights under 42 U.S.C. 1983 and 1985, regarding petitioner's lawsuit against his ex-wife for fraud on his community property rights by?:

A) Essentially *rendering its own judgment on the pleadings* based on petitioner's Complaint and his ex-wife's Answer and Counter-Complaint by relating in the Committee's Recommendations to the Supreme Court, the **sole appellate court for review**, that petitioner's lawsuit was, "a potential

abuse of process"..... instituted, ..."in bad faith and motivated by an improper and vexatious purpose.....for the sole purpose of harming or otherwise adversely impacting his ex-wife?"

B) (1) Additionally violating petitioner's: 1) Privileges and Immunities, Right to Privacy (Substantive Due Process), Right to Procedural Due Process, and Right to Equal Protection guaranteed to him in the Constitution of the United States in §1 of the Fourteenth Amendment; 2) Privileges and Immunities in § 2 ¶ 1 of Article IV of the Constitution of the United States; and 3) Civil Rights embodied in 42 U.S.C. 1983 and 1985, **by discriminating against, harassing, and conspiring against petitioner with the attorney representing petitioner's ex-wife and the Family Court Judge** to insure that the Committee's "judgment on the pleadings" in its Recommendation to the Supreme Court was **validated** by having the court award attorney's fees against petitioner, contrary to procedural and legal precedents, the conspiracy being **well after** the Recommendation was submitted to the Supreme Court and petitioner's Petition For Review had been filed with the Supreme Court?

B) (2) (a) **Conspiring** to sabotage petitioner's Writ of Certiorari to the United States Supreme Court by attempting to time the deadline for the filing of this Writ of Certiorari with the deadline for filing an appeal to the Nevada Supreme Court on the issue of attorney's fees, until petitioner confronted the attorney for his ex-wife in open court about this apparent scheme?

B) (2) (b) **Conspiring** with a Las Vegas Municipal Court Judge in the timing of the Supreme Court's issuance of its Order Denying Petition?

QUESTION NUMBER 3

Whether the State Bar violated petitioner's rights to Freedom of Speech guaranteed to him under the First Amendment to the Constitution of the United States, and concomitantly violated his Civil Rights embodied in 42 U.S.C. 1983 and 1985, by retaliating against petitioner in denying his right to practice law *with prejudice*, **after petitioner had passed the bar exam,** because of: a) petitioner's 1994 letter condemnatory of the ethics of the State Bar and its discrimination against attorney competition in the state; b) petitioner verbally demanding a tentatively scheduled second hearing before the Committee and then firmly defending his application at the hearing; and c) petitioner representing himself ***in proper person*** throughout the proceedings?

LIST OF PARTIES

Douglas L. Nicholson, Esq., Petitioner, and the State of Nevada, through the State Bar of Nevada, and its Board of Governors, Board of Bar Examiners, and Committee on Moral Character and Fitness, as the Respondents, the State Bar of Nevada being a public corporation created by statute, having perpetual succession, the right to sue and be sued, and under the exclusive jurisdiction and control of the Nevada Supreme Court. (NV SCR 76, see Appendix)

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CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS

There are no citations for this case in either official or unofficial reporters, as if it never existed. The Summary of Hearing and Recommendations of the Committee (Committee on Moral Character and Fitness of the Board of Bar Examiners of the State Bar of Nevada) issued on December 11, 1995 was a non-reportable confidential report only directed to the Nevada Supreme Court and petitioner, and has no case number. The undated ORDER DENYING PETITION rendered by the Nevada Supreme Court, Case No. 27926, was filed with the Clerk of Court on February 26, 1997, and since the decision of the Court was not rendered as an OPINION, it was not reported in any official or unofficial reporters. Petitioner was informed by a Deputy Clerk of the Nevada Supreme Court (paraphrasing) that in cases such as petitioner's, only those cases that justify reporting as OPINIONS (with citations in the Nevada Reporter) are those that establish precedent, contain important issues, or are of interest to the Bar and the public, and further that the Petitioner had no right to learn, and could not learn the name of the Justice to whom his case was assigned and the author of the Order, since the decision of the Supreme Court was not rendered as a reportable OPINION.

PETITION FOR WRIT OF CERTIORARI

The Nevada Supreme Court filed its undated, but signed ORDER DENYING PETITION with its Clerk of Court on February 26, 1997, and the basis for jurisdiction for this Petition For Writ of Certiorari from that ORDER is pursuant to 28 U.S.C. §1257 (a) and United States Supreme Court Rule 10 (b) and (c).

CONSTITUTIONAL PROVISIONS AND STATE REGULATIONS INVOKED

The provisions of Article I, § 8 clause 3, Article IV § 2, the First Amendment, and § 1 of the Fourteenth Amendment to the Constitution of the United States; 42 USC 1983 and 42 USC 1985; and Nevada Supreme Court Rules, SCR 51(4) and (8), SCR 56 (c), SCR 59(1) and (2), SCR 67(2), and SCR 76 are set forth in the Appendix.

STATEMENT OF THE CASE

This is a non-traditional civil case by an attorney, your petitioner, whose application for admission to practice law in Nevada was denied *with prejudice* **(can never reapply)** by an undated Nevada Supreme Court Order filed on February 26, 1997, **after petitioner had passed the 1995 Nevada bar exam.** Petitioner filed his bar application with the State Bar of Nevada (State Bar) on January 31, 1995, reflecting therein that he: was a licensed attorney in the states of Louisiana (19 years) and California (8 years); had never had a disciplinary complaint filed against him; had no criminal record (other than a misdemeanor arrest for marijuana in 1973 which had been expunged); had never filed for bankruptcy; had never been sued by an unsecured creditor; and had been residing in Nevada for almost two years.

Petitioner had previously filed an application to sit for the Nevada Bar Exam on February 1, 1994, but for unforeseen reasons decided against sitting for the 1994 bar exam within one week thereafter. When petitioner was informed that no portion of his $450 application fee was refundable for any reason, he stopped payment on his check on 2/11/94. Letters were then exchanged between the Director of Admissions (Director) and petitioner, dated respectively 2/16/94 and 2/24/94 (see Appendix). **Petitioner believes that his 2/24/94 response letter to the Director was the "mustard seed of discontent" that ultimately germinated into the retaliation and discrimination that he has experienced from the State Bar,** although the State Bar would obviously never admit this. The Director's letter indicated that stopping payment on petitioner's check, "will be a potential character and fitness issue in a later application to the State Bar of Nevada." Petitioner's response letter was an affront on the State Bar's ethics in insisting on appropriating petitioner's $450, comparing such conduct to an attorney retaining an "unearned fee," but went further to "accuse" the State Bar in the ways that it discriminates against attorney competition in Nevada vis-a-vis other states.

Prior to submitting petitioner's 1995 bar exam application, petitioner met with the new Director, and spoke by telephone with the Chairman of the Committee on Moral Character and Fitness (Committee), and was informed that his 2/24/94 letter should not prejudice petitioner, that petitioner should submit his 1995 application, but that petitioner might have to pay any nominal expenses incurred on his 1994 application. Comforted, petitioner submitted his application.

Thereafter, almost three months after applying, petitioner was informed by letter dated April 26, 1995 from the State Bar that his application had been placed on a character and fitness hold, and to within 30 days, complete a Statement of Financial Conditions, and provide copies of pleadings and settlements in six (6) Louisiana lawsuits, all divulged in considerable detail in the application, in which petitioner was a party defendant. Petitioner timely complied by providing the State Bar with all information in his possession, an explanation of what was not in his possession, and submitting in writing detailed information and facts concerning each lawsuit.

Thereafter, on or about July 1, petitioner was notified by the State Bar by telephone that a Committee hearing (first) had been scheduled for July 13, 1995 regarding his application, five and one-half (5 1/2) months after petitioner's application had been submitted. This verbal notice was two weeks prior to the **hearing**, and the hearing date of July 13 was **ten (10) days before the scheduled bar exam.** Although impecunious at the time, well known to the State Bar, petitioner was forced to pay $750 in advance of the hearing, which he did with his sister's check.

Petitioner could not afford legal representation at the July 13 hearing, and represented himself in proper person, since the State Bar had no provision for appointing legal counsel to those who could not afford an attorney, and petitioner firmly believed that there was nothing in his application that would ethically, morally, or professionally preclude his sitting for the bar exam and being admitted to the State Bar. Petitioner signed the waiver of notice

presented to him prior to the hearing. Four Committee members were present, the minimum for a quorum. The result of this hearing was a request by a Committee member to provide the names, addresses, and telephone numbers of attorneys involved in the lawsuits in which petitioner was a named defendant, and to provide copies of the lawsuit pleadings not previously submitted, copies of which petitioner did not possess. Another Committee member, unfamiliar with real estate law and terminology, requested 'diagrams' of the real estate lawsuits. At the end of the hearing, petitioner was offered and accepted his admission ticket to take the bar exam, was informed that he would remain on a character and fitness hold, and that there was a possibility of a subsequent hearing pending receipt and review of the requested information. All of the information requested was sent by petitioner and received by the State Bar on or before September 1, 1995.

Petitioner never received any communication initiated by the State Bar regarding the status of his application after a July 21, 1995 letter from the Director reiterating the information requested by Committee members at the July 13 hearing. However, in early October 1995, after learning that petitioner had passed the bar exam, he began telephoning the State Bar to determine the status of his application. Petitioner was led to believe, and believed, that the additional information requested and provided would be reviewed prior to the admission date of October 29, and if he did not hear from the State Bar, then he would be admitted to the Bar on that date. Petitioner telephoned the State Bar Office several times prior to, and dailey the week of October 29, never being able to learn whether or not he would be sworn in on October 29. On October 28, petitioner again telephoned the State Bar Office to confirm that he would be sworn in the next day, only to learn that the office was closed in preparation for the next day's admission ceremonies. Petitioner finally called the Director at home to learn that he would not be sworn in the next day, that the Committee had not decided on his application, and that it was not known whether or not there would be a second hearing, or if so, when.

Applicant was informed by telephone about one week before that a second hearing had been tentatively scheduled for November 30, but that it may not be necessary. Again, after several telephone calls to the State Bar Office prior to November 30, and again on November 29, petitioner could not be told by anyone, even the Assistant Director, whether or not there would be a hearing the very next day. At that point, petitioner told the Assistant Director to tell the Committee Chairman that he was now "demanding" that there be a hearing the next day at 10:00 a.m., as scheduled.

At the second hearing on November 30, petitioner again represented himself for the same reasons as before, and again signed the waiver of notice presented to him prior to the hearing. There were five (5) Committee members present at this hearing, one of whom was not present at the first hearing. Although not requested by petitioner, this Committee member should have voluntarily recused himself from the hearing. In February 1995 petitioner rendered an arbitration award against the client represented by this Committee member's law firm, and his law firm was seeking $29,000 in attorney's fees to be assessed against the opposing party, which were denied, because petitioner's award was in favor of the opposing party. Regardless, petitioner rather indignantly defended his application at this hearing, and when one Committee member made the statement that petitioner had not provided all of the requested information requested, she was noticeably embarrassed when petitioner pointedly asked her to tell him exactly what had not been provided. She could not. This was the same Committee member who, at the first hearing, requested petitioner to prepare diagrams of the real estate cases, and never mentioned the diagrams at this second hearing. Also, the Committee member who made the request for names, addresses, and telephone numbers of attorneys in cases for which petitioner was a named defendant, never mentioned that this information had been provided, or whether any of these attorneys had been contacted.

The Committee's Summary of Hearing and Recommendations of the Committee (Recommendations, see

Appendix) was unanimously approved, signed on December 11, and forwarded to the Nevada Supreme Court on December 14, 1995. The Committee recommended "that the Applicant be denied with prejudice to the State Bar of Nevada." The **Recommendations cited no statutory or case authorities in support of its positions on the issues, relying only on the over broad concepts as cited in SCR 54 (4) & (8).**

The Committee's Recommendations relied on essentially three reasons to deny petitioner with prejudice: 1) Financial Responsibility; 2) Personal and professional lawsuits; and 3) Family Court lawsuit against his ex-wife.

Petitioner openly and honestly disclosed his credit card obligations of $40,000 and $27,000 in student loans in his application. Petitioner admitted at the first hearing that he'd "wasted" about $5,000 over a ten (10) month period playing high stake slot machines in an effort to solve his financial problems. Portions of the Petition for Review further explain petitioner's rebuttal to the Recommendations on this issue. At page 12, lines 6-17:

> "It is submitted to this Court that this is the only legitimate issue in the entire Recommendation that should have any relevancy to the Applicant's right to practice law in the State of Nevada. It is further submitted to this Court, as testified to before the Committee, that the Applicant was exercising financial responsibility to solve his financial problems by undertaking the task of becoming licensed to practice law in the State of Nevada. Applicant testified at the hearings that his greatest short-term and long-term earning capacity was as a practicing lawyer, that he had been a resident of Nevada for over one and one-half years, that he desired to finally settle down in Nevada, and that his personal opinion was that the State of Nevada offered one of the best opportunities to practice law in the United States today due to its economic and population growth (at least a much better opportunity than in Louisiana or California). Applicant also testified that

the filing of a Bankruptcy was not an option, because he believed he could solve his financial problems, especially considering that the amount of the indebtedness was not unduly burdensome."

Further, at page 15, line 22-27, and page 16, line 1-2:

"It is also relevant that Applicant would not have his financial problems if: 1) he had not attended the American Graduate School of International Management; 2) the Japanese economy had not become so depressed during 1992, and he could have secured Japan related employment after securing a Master of International Management degree; 3) his then wife had not had his community property interest in their jointly owned business awarded to her without his knowledge in 1992 in Los Angeles County; 4) he not experienced some age discrimination in the job market; and 5) had he been able to find meaningful employment during a period when U.S. businesses were downsizing and rightsizing mid-aged and all levels of management out of jobs."

Nevertheless, despite that petitioner had never filed a bankruptcy in his life, had not been sued by any unsecured creditor, had kept in contact with his creditors, indicated that he wanted to pay his creditors and would not file a bankruptcy, and never had a debt or credit problem until the recent years (overwhelming majority of it on advanced education), nevertheless, the Recommendations insinuated and insulted the petitioner that he would steal money from his clients to gamble on page 3, line 25 stating that petitioner, "failed to recognize the severity of his behavior and the risk it poses for future Nevada potential clients," referred to petitioner as a "problem gambler".... "no affirmative evidence of.... rehabilitation" (page 4, line 4)...."which the committee believes to be a serious problem"(page 4, line 11)

Regarding the six (6) lawsuits, three (3) involved professional negligence for work performed from June 1984 to August 1985 dealing exclusively with high risk clients in the high risk legal area of real estate exchanges. Only one lawsuit resulted in any liability, and that was a 1988 nuisance settlement over petitioner's objections by the Errors and Omissions insurer for petitioner's employer law firm. One case was voluntarily dismissed as being unmeritorious, and the third case was never prosecuted after exceptions to the Complaint were filed, and has prescribed under the Statute of Limitations. The other three (3) cases were real estate foreclosures dating back to the latter 1980's in which petitioner was the owner or partial owner of the properties foreclosed upon, only one of which resulted in a deficiency lawsuit which was settled during discovery by petitioner and his ex-wife for $10,000. Petitioner explained all six of these lawsuits in great written detail, provided all of the requested documents then in his possession within 30 days of the State Bar's April 26 letter, and provided the remainder of the documentation after the first hearing, at considerable time and expense in securing them from Clerks of Courts and attorneys in Louisiana. To further explain the prejudice of the Committee toward this petitioner, regarding his financial status, the following is drawn from page 16, line 6-17 of the Petition For Review:

> "Again, with regard to this issue, the Committee's misrepresentation of facts and conclusions reflect the extent to which this Committee was willing to mislead this Court in order to perpetuate its prejudice against this Applicant. It is submitted to this Court that these three lawsuits involving real estate foreclosures had absolutely nothing to do with Applicant's character and fitness to practice law, and furthermore, had absolutely nothing to do with Applicant's ability to demonstrate financial responsibility. (see paragraph 11 on page 4-5 of the Recommendation wherein the Committee states, "Three suits involved foreclosures on mortgages, reflecting poorly on the Applicant's ability to demonstrate financial responsibility....") As testified to by Applicant at the first hearing and set forth in his application,

> and conveniently not mentioned by the Committee, is that all three of these lawsuits were directly related to the Louisiana economy's precipitous fall into a depression as a result of an international oil and gas economy that suddenly became depressed."

Furthermore, regarding the professional lawsuits, the following was written on page 21, line 2-7 of the Petition For Review:

> "Contrary to this overwhelming evidence submitted by this Applicant that there was no malpractice in any of these cases; contrary to the fact that the facts of these cases were over ten(10) years old; contrary to the fact that since then the Applicant passed the California Bar Exam; and most importantly, contrary to the fact that the Applicant passed the Nevada Bar Exam, this Committee, nevertheless, has determined that this Applicant is incompetent to practice law in the State of Nevada."

The Clark County, Nevada Family Court Complaint filed against petitioner's ex-wife on November 8, 1995 was for alleged fraud on his community property rights, breach of contract, and meritricious relationship. Petitioner's ex-wife was awarded petitioner's one-half interest in a community property import/distribution business in California in 1992 by the Los Angeles Superior Court, contrary to their agreement and without notice or knowledge to the petitioner, and while petitioner was in graduate school out-of-state. At the time of filing, both parties were residing in Nevada and the business had been relocated to Nevada. After the Petition For Review was filed, after securing a copy of the Los Angeles Superior Court transcript of the divorce hearing, petitioner learned that his ex-wife had perjured herself in having his community property awarded to her. Regardless, the Family Court Complaint, the first time petitioner had been the Plaintiff in any lawsuit, was filed two days before the statute of limitations was to run on several issues therein. Petitioner dutifully provided a copy of his Complaint

to the Committee in advance of the November 30 hearing as his continuing application obligation. **What is most interesting is that the Committee had in its possession his ex-wife's Answer and Counterclaim to petitioner's Complaint at the second hearing on November 30 at 10:00 a.m., BEFORE petitioner had even received it, since it had only been filed the day before, on November 29! This suggests that the Committee began collaborating with his ex-wife's attorney after the State Bar received the copy of the Complaint provided to the Committee by petitioner.** Based on the pleadings, with either disregard or distortion of petitioner's testimony at the hearing, the Committee's Recommendations literally "adjudicated" this case by rendering its own judgment on the pleadings by opining to the Supreme Court, "the Committee feels that the applicant has engaged in further conduct that reflects negatively on his character and fitness to practice; specifically, a potential abuse of process," in describing this lawsuit. Petitioner responded in part to this in his Petitioner For Review at page 22, line 3-13, as follows:

> "The claim against Applicant's ex-wife is detailed in the Petition and will not be repeated here. This lawsuit was not filed as an abuse of process, but as an exercise of Applicant's constitutional right as a citizen of the State of Nevada and a citizen of the United States to redress what the Applicant believes to be an injustice. What this Committee calls an abuse of process is the foundational reason why our legal system and lawyers exist. Yet for this Applicant to exercise his Constitutional rights, it becomes an abuse of process! Yes, there is a scintilla of vindictiveness in this lawsuit, as any self-respecting lawyer will tell you that there is in any lawsuit. However, for the Committee to "characterize this conduct as being in bad faith and motivated by an improper and vexatious purpose" (see paragraph 23, page 8 of the Recommendation) again shows the extreme prejudice against this Applicant, and the extent to which this Committee was willing to go to discredit the Applicant based on their own innuendo and distortion of facts. The Committee is wrong

about my motivation, totally wrong. They are reading into this what they wanted to read into it, because of their preconceived prejudices about this Applicant."

After being granted a thirty day extension, petitioner filed his Petition For Review (Petition) with the Nevada Supreme Court on February 9, 1996 without the benefit of the transcripts of the hearing, since petitioner could not afford them, and the Committee didn't send them to petitioner with the Recommendations. On page one (1) of the Petition For Review, petitioner requested that the Supreme Court review his 1995 application "de novo," for the following reasons:

"1. The Summary and Recommendation of the COMMITTEE ON MORAL CHARACTER AND FITNESS (Committee) was erroneous, insupportable in fact or law; and

2. The Committee failed to rebut Petitioner's prima facie case showing that he was of good moral and ethical character; and

3. The Committee violated Petitioner's Constitutional Due Process Rights in the scheduling and conduct of its hearings, and his Constitutional Substantive Due Process Rights by 'adjudicating' to this Supreme Court, the same Supreme Court with appellate jurisdiction, a pending Clark County Family Court case in which Petitioner is the Plaintiff."

Page 3 of the Addendum to Petition For Review, at lines 22-26, petitioner addressed the "allegations of prejudice, discrimination, and overzealousness" of the Committee regarding the contents of its Recommendations stating:

"The Court will see the extent to which this Committee went in justifying its Recommendation by; 1) distorting facts; 2) selecting facts only supportive of its positions; 3) ignoring irrefutable facts which would support a favorable Recommendation; 4) disregarding the testimony of the

> Applicant at the two hearings; and 5) violating Applicant's constitutional procedural and substantive rights,"

and then the Addendum continued on to support this contention with facts and case law contradicting the facts and conclusions set forth in the Committee's Recommendations.

In the Petition For Review, in the Conclusion at page 27 of the Addendum, at lines 5 through 22, the petitioner posed two questions to the Supreme Court, as follows, neither of which were responded to by the State Bar in its Answer to the Petition For Review, or by the Supreme Court in its Order:

> "In the final analysis, this Applicant desires the Court to answer two questions believed to be pivotal in deciding his fate. First, why can this Applicant presently practice law in either the State of Louisiana or the State of California, even accepting the facts and conduct relied upon by the Committee, and not be allowed to practice law in the State of Nevada? (No "double-standard" as to those seeking admission to the bar and those already admitted to the bar...Disciplinary Matter Involving Buckalew [supra]). Secondly, Applicant urges this Court to judge this Applicant on one side of the Scale of Justice with Mark Birmingham (In re Birmingham) on the other side of the scale of justice, and to each ask yourself this: If reasonable persons or reasonable attorneys had to choose between these two Applicants, what percentage would choose this applicant as better fit to practice law in the State of Nevada, that is, which one does the public least likely need protection against, and which one is most likely to maintain public confidence in the bar as a whole? The Court will recall that Mr. Birmingham was admitted to the practice of law in the State of Nevada in 1994 despite the fact that Mr. Birmingham plead guilty to the Federal felony of conspiracy to distribute Marijuana and was sent to prison. Applicant doesn't pose this question to insult either Mr. Birmingham or

> this Court. It is posed because this Applicant is fighting for his right [" ..practice of law is not a privilege but a right and is subject to regulation to ensure that those who practice have the necessary mental, physical, and moral qualities required ... Matter of Ronwin (680 P2d 107) (Ariz 1983)] to earn a livelihood in his chosen profession in this State, and as such, he has a right to have that question answered."

After filing two Motions to Expedite with the Supreme Court, it finally ordered the State Bar to Answer the Petition on October 28, 1996, and the State Bar's Answer was filed on November 27, 1996. Petitioner filed a Reply to the State Bar's Answer on December 11, 1996. Petitioner's Reply at Page 1, lines 13-26, best summarizes the State Bar's Answer:

> "Your Honors, it is submitted that the Bar did not Answer Applicant's Petition, but rather simply regurgitated its Recommendation to the Court. Applicant presented facts in his Petition that are of record, facts which the Bar ignored or distorted in making its Recommendation to this Court, and which the Bar failed to specifically rebut in its Answer. Judicial precedent was cited in the Petition in support of Applicant's positions on the facts and issues, and the Bar's Answer did not offer even one single case to distinguish or contradict the case authorities cited in the Petition, and did not offer one single case to support its Recommendation or Answer on specific facts and issues. Rather, the Bar cited general and over broad principles regarding character, fitness, and ethics from Supreme Court Rules, the Code of Recommended Standards for Bar Examiners, and the lofty comments by Justice Frankfurter in the 1957 U.S. Supreme Court case of *Schware*."

Petitioner's Reply raised the following constitutional violations of petitioner's rights by the State Bar that were factually raised, but not denominated as such, in the Petition For Review {Reply was made a part of the Supreme Court record as ordered by

the Supreme Court in footnote 1 of the Order Denying Petition}:

At Page 11, lines 16-27, and at page 12, lines 1-2:

"4. Is it a violation of Applicant's Constitutional rights for the Bar to reserve its decision on admission after a hearing two weeks prior to the Bar Exam, grant him permission to take the Bar, and then deny him admission after he passes the Bar Exam, especially considering: 1)that the Application was submitted to the Bar five and one-half (5 and 1/ 2) months prior to the hearing; 2) that there could have been, and should have been, a decision on the Application well prior to the Bar Exam; and 3) that there were positive developments in the Application between the first hearing and the post-bar hearing when he was denied admission? Is the practice of law a privilege or a right?.....after an Applicant passes the Bar Exam?"

At page 12, lines 3-14:

"5. Is it Constitutional for the Bar to deny an Application with prejudice, permanently "disbarring" the Applicant for life by preventing the filing of any future Application for Admission, considering that even disbarred licensed attorneys have the right to reinstatement of their licenses at some future date, and considering that there is no double standard for ethics vis-a-vis licensed attorneys and Applicants? Assuming arguendo, that this Court does not adopt the "no double standard" rule of law, should a licensed attorney in one or more States who is an Applicant for the bar in this State be judged by the same standard of ethics as licensed attorneys in this State, or to a higher standard (which is what it would be) as a non-attorney Applicant?"

At page 13-14, lines 3-26 and lines 1-16:

"6. Is it Constitutional for the Bar to only transcribe the testimony of the Applicant at any hearing(s), and not to either audio-tape or video-tape the hearing(s), when the Supreme Court, under the State Constitution, has original and exclusive jurisdiction over admission of attorneys to the Bar, with the concomitant obligation to review and decide *de novo* an appeal for denial of his Application? How can the Supreme Court review an Application *de novo* when it does not have the benefit of seeing and hearing the Applicant? Yet, the Bar, citing language from the *Schware* case (page 13, lines 21-25 of Answer) urges the Court to substitute its own judgment with that of the Bar because they have seen and heard the Applicant. Applicant, when reading the transcripts, especially of the first hearing, was appalled at how much of his testimony was not transcribed, partially or inaccurately transcribed, or garbled to such an extent, that some of his answers were incomprehensible. If the transcriber could not keep up with the testimony, she should have said so!"

"7. Did the Bar violate Applicant's Civil Rights, constitutionally embodied in 42 U.S.C. Sec. 1983 by: 1) discriminating against him in its overall treatment of the Applicant personally and procedurally, 2) discriminating against Applicant by transferring the burden of proof to the Applicant to prove that he was of good moral character and fitness when Applicant had already established a formidable prima facie case showing that he was of good moral character; 3) discriminating against the Applicant by rendering a decision that is clearly erroneous and insupportable in law and fact, and 4) discriminating against the Applicant by retaliating against him for the February 24, 1994 letter to the then Director of Admissions?"

"8. Is the admission of an attorney in one State a decree of that State's Supreme Court entitled to full faith and credit by a sister State under the Constitution?.....at least with regard to the attorney being held to the same standard of ethics as licensed attorneys in the sister State? Would a judgment rendered by this Supreme Court denying admission of this Applicant to practice law in the State of Nevada be a final judgment entitled to full faith and credit in other States? If the judgment of this Supreme Court denies the Applicant admission, should the States of Louisiana and California disbar this attorney by giving full faith and credit to this final judgment of Nevada's highest Court, and should or could, all other States deny any Application for admission by this Applicant based on this Supreme Court's adverse judgment?

The Supreme Court's Order Denying Petition (hereafter Order, see Appendix) was not dated, but was filed with the Clerk of Court on February 26, 1997. The Order addressed only the constitutional procedural issues, and ruled that petitioner's constitutional due process rights were not violated in the timing of the notices or the timing of the hearings, and that petitioner was not prejudiced by an unprepared Committee person or by the participation of the Committee person not present at the first hearing, but present at the second hearing. **The Order failed to address the remainder of the violations of petitioner's constitutional rights alleged in his Petition For Review and in his Reply, and failed to address even one single issue on the merits of the case.**

The date of filing the undated Order on February 26, 1997 has significance. On February 19 petitioner faxed a letter to a Las Vegas Municipal Court Judge requesting that the Judge allow a continuance of a case docketed in his court the next day, because the defendant desired that petitioner represent him in the case once licensed as an attorney in Nevada. There was no response to the faxed letter. Petitioner prepared Affidavits for himself and the defendant for defendant to offer into the trial record in the event that the Judge would not continue his case for 90 days. The Judge refused

to admit the Affidavits into evidence, even after petitioner went to the aid of the defendant, and requested that the court allow them into evidence, but again the Judge refused. Petitioner's comments to the court at that point, as per the hearing transcript were:

> Mr. Nicholson: "For the record, my name is Douglas L. Nicholson. I'm a licensed attorney in the state of California and the state of Louisiana. I applied for--I took the bar exam in this state in 1995 and passed it. Okay. The bar ethics committee here denied me the right to practice for reasons that I personally think, and a number of attorneys think, are erroneous. Okay. I have appealed to the State Supreme Court. They have had everything before them since December 11, 1996. They still have not rendered a decision in my case, even though they have the sole jurisdiction to admit attorneys in this state. And they should hear that case by preference and priority as I have brought to their attention on a number of occasions to expedite my case. They haven't done that. Okay. Personally, I want to introduce these (meaning Affidavits) into this record because these are very relevant to what's going on in this state with regard to the admission of attorneys. And I'm being denied the right to practice law, to represent him, and he's entitled to representation. I am the counsel of his choice. I want to introduce these into the record. And if you don't accept those into this record, then I object, sir."
>
> The Court: You have no standing to object here, sir.
>
> The defendant then objected, again.
>
> The Court: That's fine. Your objection is noted. **I'll have this sent over to the bar today (meaning petitioner's faxed letter to the Judge).**

The Court then continued the case for 30 days, and ordered defendant to go directly to the public defender's office. Later, at trial

the Judge found defendant guilty, and that case is now on appeal to the District Court, and a number of violations of his constitutional rights in the municipal court will be raised.

It is believed that the Judge did contact the State Bar, and that petitioner's fax to the Judge was sent or faxed to the State Bar, on February 20. Is it just coincidental that the undated Order of the Supreme Court was filed six (6) days after the date of the hearing in Municipal Court, especially considering that the Supreme Court had all documents to render a decision on December 11, 1996?

Furthermore, with regard to petitioner's lawsuit (as plaintiff) against his ex-wife, there was a second hearing scheduled for April 16, 1997, and the timing of events prior thereto was, as follows:

> 2/14/97 OPPOSITION TO PLAINTIFF'S MOTIONS signed by ex-wife's attorney
> 2/18/97-OPPOSITION FILED with Clerk of Family Court
> 2/24/97- AFFIDAVIT of attorney's associate signed in support of attorney's fees
> 2/25/97- AFFIDAVIT FILED with Clerk of Family Court
> 2/27/97-CERTIFICATE OF MAILING signed by attorney's secretary showing both OPPOSITION & AFFIDAVIT mailed to petitioner

On January 11, 1997 petitioner filed his Ex Parte Motion to vacate the court's Dec. 11, 1996 order awarding attorney's fees to his ex-wife in the amount of $2,500 as being null and void under Nevada law, with a detailed brief in support thereof. The Opposition Motion was not filed until February 18, and it is more than coincidental that the timing of events were seemingly made to insure that the Opposition Motion would be received by petitioner on or about the same date as he received the Supreme Court Order. Petitioner brought this to the attention of the attorney in open court at the hearing on April 26, and told him that he would have to explain this in Federal Court one day. The attorney was visibly surprised, as was the Judge. The Judge literally prosecuted the justification for the

attorney's requested in the additional amount of $3,500 in attorney's fees, but after petitioner made the foregoing statement about the attorney explaining the timing in Federal Court, she only his ex-wife one-half of that amount. The previous hearing on attorney's fees was on September 11, 1996, and the same Judge rendered her decision three months later on December 11, 1996, saying that it would be in 2 to 3 weeks. Interestingly, on April 26, 1997 the order was rendered in open court, and this time, rather than preparing the Order herself, requested the ex-wife's attorney to prepare it. Oddly, the attorney had already prepared an Order which had been sent to petitioner with the Opposition Motion, but after the petitioner's comments in court to the attorney, he did not produce the Order for the Judges signature, and the Order was not signed until May 7, filed on May 9, postmarked to petitioner on May 19, and received by him on May 23. Also, his "new" Order was contained considerably less offensive language, than the one originally sent to petitioner. It is believed that the original intent was to harass petitioner, and burden him simultaneously with appeals to the Nevada Supreme Court on the issue of attorney's fees, and to this Honorable Court on the Petition For Writ of Certiorari. It is also believed that the attorney was being provided information regarding the status of the Petition For Review from the State Bar, from the Supreme Court, which explains the timing of the Certificate of Mailing above on February 27 (and also the timing of the Supreme Court Order after the Municipal Court experience-must wonder whether the Supreme Court Order was simply a card to be played at the proper time, like a "pocket veto"). Is the Family Court Judge implicated in this? Well, she did zealously prosecute and defend the attorney's position on legal fees. She did render the decision that day, instead of three months later. She did, in petitioner's estimate, render a decision contrary to established law and procedure. She did, in effect, **validate the "adjudication" (Judgment on the Pleadings) made in this case by the Committee in its December 1995 Recommendation to the Supreme Court, which made them right!**

ARGUMENT

1. NEVADA SUPREME COURT'S ORDER FUNDAMENTALLY VIOLATES THE UNITED STATES SUPREME COURT'S DOCTRINES ENUNCIATED IN *"SCHWARE V. BOARD OF BAR EXAMINERS OF NEW MEXICO"*; ITS OWN 1994 CASE OF *"IN RE: PETITION OF BIRMINGHAM,"*; AND DIGRESSES FROM MAINSTREAM DECISIONS GOVERNING ADMISSIONS TO A STATE BAR.

In *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957), 77 S.Ct. 752, 1 L.Ed.2d 796, Justice Black stated that, "A state cannot exclude a person from the practice of law or from any other profession in a manner or for reasons that contravene the Due Process or Equal Protection clause of the Fourteenth Amendment,"(page 239), further that, "A state can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a *rational connection* (emphasis added) with the applicant's fitness and capacity to practice law,"(page 238-239) and further that, "Even in applying permissible standards, officers of a state cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is **invidiously discriminatory.**"(page 239, and emphasis added). The *Schware* case, an unanimous U.S. Supreme Court decision (with one justice absent) rendered in 1957 pronounced tenets of justice and fairness that have endured in defining the rights to due process and equal protection guaranteed under the Fourteenth Amendment, and it is submitted that the State Bar abandoned those principles in discriminating against petitioner. It should also be noted that the Court in *Schware* reversed a near unanimous decision by the New Mexico Supreme Court, and a unanimous decision of the New Mexico State Bar.

The petitioner presented to the Committee and argued in his Petition For Review to the Supreme Court substantial prima facie

evidence that he was an attorney of ethical, moral, and competent character. The positive aspects of his application were ignored by the Committee and apparently by the Supreme Court. Despite this prima facie showing of good character, the Committee "shotgunned" petitioner with numerous irrelevant and/or obsolete matters, distorted facts, and ignored the prima facie facts to "create," and thus discriminate against, this petitioner as an immoral, unethical, and incompetent attorney. Petitioner asked the Supreme Court to compare him to Mr. Birmingham, who was admitted to the practice of law in Nevada in 1994, "*In re: Petition of Mark Birmingham*, 110 Nev., Advance Opinion 11, Nevada Supreme Court, January 21, 1994."

It is submitted that the *Birmingham* decision, although factually different from petitioner's case, directly contradicts the Supreme Court's Order in petitioner's case. Petitioner's application was denied *with prejudice (can never reapply)*, but Mr. Birmingham, despite the Supreme Court's refusal to admit him by Order in October 1991 (application denied with prejudice), after he'd passed the July 1991 Bar Exam, admitted Mr. Birmingham in 1994 as the first and only person to ever be accorded a waiver of SCR 67(2), the Supreme Court Rule disallowing future applications to the State Bar of those denied with prejudice. This disparate treatment violated petitioner's rights to procedural due process and equal protection guaranteed under the Fourteenth Amendment to the US Constitution, and if done in concert with the State Bar, violated petitioner's civil rights under 42 USC 1983 and 42 USC 1985.

Disturbing to petitioner was the special treatment accorded Mr. Birmingham who was arrested while in law school, and pled guilty to federal charges of conspiracy to distribute marijuana via airplane hauls between the United States and South America. He went to Federal prison. After later completing law school, he was allowed to take the Nevada Bar Exam in 1990 while on parole and passed. In July 1991, the State Board of Bar Examiners (Board) recommended to the Supreme Court that Mr. Birmingham be admitted to the State Bar at which time the Supreme Court refused

the Recommendation in questioning the Board's decision. Nevertheless, in 1994 Justice Springer, writing for the majority, with Justice Young and Justice Shearing concurring, wrote: "the members of this court have all concluded that Birmingham had at this time clearly and convincingly demonstrated full and complete rehabilitation," and he was admitted to the Nevada Bar, regardless that he cannot become a Notary Public, can't hold public office, can't vote, and can't bear arms.

Since the Supreme Court's Order failed to address any of the merits of petitioner's case, it can only be assumed that the Supreme Court agreed with the Committee that petitioner lacked financial responsibility. Petitioner disclosed approximately $65,000 of debt, $25,000 of which was directly related to recent student loans for a Master of International Management degree, and approximately another $15,000 indirectly related to attaining the degree. Regardless, that petitioner had never filed a bankruptcy, had never been sued by an unsecured creditor, had testified that he wanted to pay his creditors and that the practice of law afforded him the best earning potential to do that, the Committee, nevertheless, branded petitioner as a "problem gambler" for admitting to irresponsibly gambling about $5,000 from credit cards over a 10 month period in an attempt to solve his financial difficulties.

It is submitted that the Committee's Recommendation and the Order of the Supreme Court regarding petitioner's financial responsibilty, based on the facts as presented, had no rational basis for denying petitioner the right to practice law in Nevada, and the findings as such by the Committee and the Supreme Court violated petitioner's right to due process and right to equal protection guaranteed under the Fourteenth Amendment to the U.S. Constitution, and were grossly in conflict with a recent decision from the Florida Supreme Court case and a Texas Appellate Court case specific to this issue. These cases are presented merely to show the extent to which the Committee and the Supreme Court discriminated against, and violated petitioner's constitutional rights.

In the case of, *Florida Bd. of Bar Examiners Re S.M.D.* (1992, Fla) 609 So 2d 1309, 17 FLW S 747, the Board of Bar Examiners denied the application, because the: (1) applicant, with her husband, had incurred over $100,000 in debt while attending law school, in part by buying goods and services on credit beyond their ability to repay on time, (2) applicant and husband filed for bankruptcy one month before applicant's graduation (and after husband had started job paying $37,000 per year), and (3) applicant misrepresented her true financial condition in the bankruptcy petition. The majority of the Supreme Court, in admitting the applicant to the Bar reasoned that: (1) most of debt was incurred for school costs (though much of it was for student loans), (2) debts were overdue and creditors were contacting applicant every day, and she had been unable to find a permanent job, and (3) apparently, the figures listed in the bankruptcy petition reflected instructions of applicant's bankruptcy lawyer, and neither bankruptcy court nor creditors had objected to them. The facts of this case are similar to the petitioner's case, except that petitioner owed $35,000 less debt, had not filed bankruptcy, and was already a licensed attorney in two states.

There is a Texas Appellate Court case similar to petitioner's, which involved an attorney applicant, and the decision of the Board of Law Examiners denying the application was reversed. In the case of *Board of Law Examiners v Stevens* (1992, Tex App Austin) 850 SW2d 558, it was held that the trial court properly found that the state board of law examiners erred in denying the attorney's application to the state bar on the basis of lack of moral character where the attorney, a member of another bar, had substantial debt that he was unable to satisfy and had had past difficulties with the IRS based on his failure to pay income taxes and file returns; and that the substantial evidence did not support conclusion attorney's omissions or motives would injure future clients, would result in obstruction of justice, or would violate state disciplinary rules, in admitting the applicant to the Bar.

On the other hand, this petitioner had substantial debt, but other than not having the problems set forth above, petitioner also never had past difficulties with the IRS for failing to pay income taxes or filing tax returns, and yet the Committee and the Supreme Court determined that petitioner lacked financial responsibility, and even insinuated that applicant would steal from clients. In this petitioner's case, petitioner had never been sued for an unsecured debt, never had any judgments entered against him, and represented in his application and in testimony at the hearings the reasons for his the incursion of his debt, all legitimate save "wasting" $5,000 on gambling after relocating to Las Vegas in an attempt to solve his financial problems, probably like Mr. Birmingham. Regardless, in a state that literally survives and thrives because of the gaming industry, for the Committee and the Supreme Court to label this petitioner as a "problem gambler" and categorize him as financially irresponsible for spending $5,000 of "borrowed" money over a 10 month period, which has to be paid back, borders on the ludicrous, and submitted is indicative of the discrimination toward this petitioner.

2. CONSPIRACY BY STATE BAR AGAINST PETITIONER IN VIOLATION OF HIS CIVIL RIGHTS UNDER 42 USC 1985 AND 42 USC 1983 WITH INTENT TO DENY PETITIONER'S RIGHT TO PRACTICE LAW, AND IN VIOLATION OF PETITIONER'S PRIVILEGES AND IMMUNITIES, RIGHTS TO PROCEDURAL DUE PROCESS, SUBSTANTIVE DUE PROCESS, AND EQUAL PROTECTION RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES.

The State Bar, through the Committee, and in concert with counsel for petitioner's ex-wife, secured a copy of his ex-wife's Counter-Complaint and Answer, which was filed on November 29, 1995, and *secured it prior to petitioner receiving a copy*, and WITHOUT NOTICE THAT THIS WOULD BE AN ISSUE at the hearing the next day, November 30, 1995, surprised petitioner with a barrage of questions regarding the same. The Committee's

Recommendations made judgments about this pending case on the pleadings alone, disregarding or distorting petitioner's testimony at the hearing.

The State Bar and the administration within the State Bar failed or refused to communicate with petitioner about the status of his application after the first hearing, misleading petitioner into believing that he would be admitted to the bar on October 29, 1995. Petitioner did not learn that he would not be so admitted until October 28, 1995 when he had to telephone the Director of Admissions her home.

The State Bar did not set a hearing in his case until five and one-half (5 and 1/2) months after his application had been filed, gave two weeks verbal notice in advance of the hearing without any indication as to the subject matter of the hearing, and had the hearing ten (10) days prior to the bar exam. Between September 1, 1995 and October 29, 1995, the admission date, the Committee failed or refused to complete the review of petitioner's application.

The State Bar could not, or would not, inform petitioner the day before the scheduled hearing for November 30, 1997 whether it would be held or not, and failed to inform him of the subject matter of the hearing, especially that the Committee intended to try the case his Family Court case on the merits at the hearing. Petitioner was led to believe that there may be no need for a second hearing, and didn't believe that there would be.

The Supreme Court waited nine (9) months to order the State Bar to Answer petitioner's Petition For Review. Despite that the State's Answer to the Petition For Review, as if informing the Supreme Court that Petitioner should be admitted, the Supreme Court nevertheless, filed an unsigned Order on February 26, 1997, over one year after the Petition For Review had been filed, denying petitioner *with prejudice* the right to practice law in Nevada.

The filing of the Order was exactly one week after petitioner

appeared in a Las Vegas Municipal Court, February 20, 1997, attempting to help a prospective pro bono client, who desired petitioner's representation in his criminal matter, to secure a continuance for 90 days in anticipation of petitioner being admitted to practice. The Municipal Judge indicated in court and on the record that he was going to send petitioner's affidavit to the Bar.

Although counsel for petitioner's ex-wife had signed the Motion in Opposition on February 14, it was not filed until Feb. 18, and the usually accompanied Affidavit in Support of the Motion was not signed until Feb. 24 and filed on Feb. 25, and it is believed that when counsel received word of the Supreme Court's Order on Feb. 26, only then on Feb. 27 were the documents mailed to petitioner in consideration that it would take an extra day for the petitioner to receive the Supreme Court Order mailed on Feb. 26 from Carson City.

On petitioner's Ex Parte order, the Family Court judge refused to vacate her patently defective and void or voidable Order of Dec. 11, 1996 awarding $2,500 in attorney's fees to petitioner's ex-wife, defended counsel's right not to divulge the content of entries on his Statement of Account for matters which COUNSEL deemed confidential, and openly defended his billing of **$3,500** for defending petitioner's Motion and filing his own Motions, and rendered her opinion again awarding attorney's fees to petitioner's ex-wife, very carefully stating that petitioner's cause of action was brought without merit, *so as to "justify"* the Recommendations of the Committee in rendering its "judgment on the pleadings," and rendered her decision that day, April 26, 1997 in open court, rather than issuing her order exactly three (3) months later after the September 11, 1996 hearing on attorney's fees. Counsel had mailed petitioner a prepared court order, his ex-wife as the prevailing party and ready for signature by the Judge after the hearing, as if this were a "done deal"(and petitioner knew it was when he walked into the courtroom). However, he did not submit the order after the hearing, but submitted a "different order" substituting less harsh words than in the original order. Also, at the end of the hearing the Judge only awarded one-

half of the requested attorney's fees. This all happened because petitioner challenged counsel in open court alluding to, but without, alleging a State Bar conspiracy, in that he would have to explain the timing of signing and mailing his Opposition Motions in Federal Court one day. It is suggested that these actions prove the point.

In the *Schware* case, Justice Frankfurter in the concurring opinion, joined by Justice Clark, and Justice Harlan, wrote most apropos words, "Life, Liberty and Property are in the professional keeping of lawyers. It is a fair characterization of the lawyer's responsibility in our society that 'he stands as a shield,' to quote Devlin, J., in defense of right to ward off wrong," and further, "Especially in this realm, it is not our business to substitute our judgment for the state's judgment, **for it is the State in all the panoply of its powers that it is under review when the action of its Supreme Court is under review.** (Emphasis added) Nor is the division of power between this court and that of the states in such matters altered by the fact that the judgment here challenged involves the application of a conception like that of 'moral character,' which has shadowy rather than precise bounds....and we must attribute to its courts the exercise of a fair and not biased judgment in passing upon the applications of those seeking entry into the profession." and further, "But judicial action, even in an individual case, may have been based on avowed considerations that are inadmissable in that they violate the requirements of due process. Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the due process clause, **such is the case here.**" (Emphasis added)

CONCLUSION

It is submitted that the State Bar was biased and prejudiced toward this petitioner, and intentionally and willfully discriminated against him, with the participation and involvement of bar members, the courts, and the administration within the bar. These are several of the reasons why this may have been, beginning with petitioner's

2/24/94 response letter to the then Director of Admissions chastising the State Bar for its apparent discrimination against lawyer competition (not mentioned then, but now, why didn't the Supreme Court simply find unconstitutional its unconstitutional SCR 67(2) when Birmingham reapplied for admission); that petitioner was another California lawyer who would not be competing in "their market;" his defiant attitude at the hearings; especially the second hearing; his being temporarily down in life and impoverished; he was a southerner; he talked like a Texan; the number of places he had traveled and lived; the color of his hair, etc. However, for whatever reasons, individually or as a herd, these lawyers abandoned the most fundamental principles prophesied by Justice Black and Justice Frankfurter in *Schware*. There is one quotation from a great American, a great lawyer, and a great U.S. President, President Abraham Lincoln, which petitioner feels compelled to quote before closing, "If you are forced to bow, bow very, very low. And hold that bitter memory until you take your revenge," and hope that the attorneys in the State of Nevada who adhere to their oath of office, believed to be the majority, and who have an opportunity to read this, can put themselves in this petitioner's shoes for just five seconds, and simply think about the hell that this petitioner has been put through, for no good reason!

This honorable court will recall that Mr. Schware was not an attorney applicant, and that he was denied the right to take the bar exam. Accordingly, the Supreme Court in *Schware* did not determine the issue of right vs. privilege to practice law, saying in footnote (5) of the opinion, "We need not enter into a discussion whether the practice of law is a "right" or "privilege," regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace." This honorable court should consider that the petitioner was an attorney applicant, licensed to practice law in two states, **and had actually been allowed to take, did take, and did pass the bar exam, before being denied the right to do so**, and would hope that this Supreme Court would

resolve this issue. "This rule was drafted on the premise that admission to practice in this state is a matter of grace and favor, a notion we are now obliged to discard," *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed. 2d. 224, as set forth in "*In the Matter of the Application of Charles L. Kellar For Admission to the Bar of the State of Nevada,*" 401 P.2d 616.

Thus Done and Signed this 27th day of May, 1997 in Las Vegas, NV

Douglas L. Nicholson, Esq.
537 E. Sahara Avenue, Ste. 209
Las Vegas, Nevada 89104
Tel: (702)792-6671
Fax: (702)792-3676
PETITIONER IN PRO PER

VERIFICATION

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

DOUGLAS L. NICHOLSON, being first duly sworn under penalties of perjury, deposes and says:

That he is the Petitioner/Applicant in the above-entitled action; that he has read the foregoing PETITION FOR WRIT OF CERTIORARI and knows the contents thereof, that they are true of his own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, he believes them to be true.

DOUGLAS L. NICHOLSON

SUBSCRIBED and SWORN this 27th day of May, 1997.

NOTARY PUBLIC in and for Said County and State.

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24a Douglas L. Nicholson Letter to Roger A. Jones, Director of Admissions, State Bar of Nevada

SUMMARY OF HEARING BEFORE THE COMMITTEE ON MORAL CHARACTER AND FITNESS

IN THE MATTER OF THE ADMISSION OF DOUGLAS NICHOLSON TO PRACTICE LAW IN THE STATE OF NEVADA

SUMMARY OF HEARING AND RECOMMENDATIONS OF THE COMMITTEE

The hearing on the moral character and fitness of Douglas Nicholson ("Applicant") in the above-captioned matter came before the Committee on Moral Character and Fitness ("Committee") of the Board of Bar Examiners ("Board") of the State Bar of Nevada on July 13, 1995. The Applicant, waived any deficiency in notice and, having been advised of his right to have an attorney present, elected to appear in propria persona. The duly impaneled hearing panel of the Committee on July 13, 1995 was composed of Keith L. Lee, Esq., Chair, and Committee members, Kathleen J. England, Esq., David R. Grundy, Esq., and Michael S. Rowe, Esq.; other persons present included Deena R. Trueblood, Director of Admissions and Sheila L. Robertson, Assistant Director of Admissions. A final determination and recommendation in this matter was continued, pending such time that the Applicant could supply the Committee with additional information and documents necessary for the Applicant's thorough explanation of matters contained within the Applicant's 1994 and 1995 Applications for Admission to Practice Law ("Application".)

On November 30, 1995 a duly impaneled hearing panel of the Committee reconvened and was composed of Keith L. Lee, Esq., Chair, and Committee members, John R. Bailey, Esq., Kathleen J. England, Esq., David R. Grundy, Esq., and Michael S. Rowe, Esq.; other persons present included Deena R. Trueblood, Director of Admissions and Sheila L. Robertson, Assistant Director of Admissions. The Applicant, again waived any deficiency in notice and, having been advised of his right to have

an attorney present, again, elected to appear in propria persona. The Committee, having heard the testimony and reviewed the evidence before it, determined that the Applicant has not met, by clear and convincing evidence, the burden imposed by SCR 51(4) and further that he failed to demonstrate, by clear and convincing evidence, financial responsibility pursuant to SCR 51(8) and, accordingly, recommends that he be denied admission with prejudice. The Committee hereby enters the following Summary in support of its Recommendation:

SUMMARY

1. The Applicant is an attorney who has been licensed in the states of Louisiana and California since April 1976 and June 1987 respectively. Applicant maintains an inactive status of membership in both states and has not been the subject of any disciplinary proceedings in either state.

2. On February 1, 1994, the Applicant filed his Application with the State Bar of Nevada accompanied by the appropriate filing fee of $450.00. Approximately two days thereafter, the Applicant sought to withdraw his Application and inquired of the State Bar via telephone as to the procedure for withdrawal and provisions for refund. Applicant was specifically advised by the State Bar that there are no provisions for refund other than $25.00 for the prepaid license fee. This is verified by a letter sent by the Applicant on February 24, 1994 wherein the Applicant states, "It was distressing to learn that the State Bar of Nevada has no policy for refund of fees under any circumstances..... Shortly thereafter, and although specifically advised of the Supreme Court Rule regarding refunds, Applicant stopped payment on his check.

3. On February 16, 1994, the Director of Admissions sent a letter to the Applicant informing him that stopping payment on his check is not an acceptable method of withdrawal and that such action would be a potential character and fitness issue in a future Application. In response, by letter dated February 24, 1994, the Applicant stated that irrespective of the Supreme Court Rule, the

State Bar was not being "reasonable" by refusing to issue refunds, and therefore he was forced to take action to protect his own financial interests by stopping payment on his check.

4. On January 17, 1995, the Applicant met with the Director of Admissions to explain the circumstances surrounding his conduct in 1994 with respect to stopping payment on his check and to inquire if such action would preclude his admission in 1995. He stated that he understood the nature of his misconduct and offered to pay for the administrative fees expended on his 1994 Application. After consultation with the Chair of the Committee, the Applicant was informed that he would not be precluded from making Application in 1995 based upon his conduct in 1994; however, he would retain a character and fitness hold pending further investigation and determination by the Board.

5. On January 31. 1995, Applicant filed his second Application with the State Bar of Nevada. A hearing was held on July 13, 1995 which was continued, and reconvened on November 30, 1995. Of utmost concern initially to the Committee was the Applicant's ability to demonstrate financial responsibility as required by SCR 51(8).

6. The Applicant testified that he is approximately $40,000 in arrears on credit card debt and has approximately $27.000 in outstanding student loans (payments on which are deferred until December 1995). Moreover, the Applicant testified that all of his credit cards have been canceled and revoked for failure to make payments thereon.

7. Additionally, it was discovered during the course of the character and fitness investigation that the Applicant had a gambling problem from approximately June 1993 until May 1994. Review of the Applicant's monthly credit card billing statements reflects that the Applicant obtained cash advances from Automatic Teller machines located in various casinos, on one occasion totaling $600 in one day on one credit card. The Applicant testified that approximately $5,000 of his credit card debt may be

attributed to excessive gambling. He does not, however, consider himself a "problem gambler." Rather, he feels that his gambling was simply a part of a "maturing" process that he underwent upon relocating to Las Vegas.

8. The Committee is greatly concerned that as recently as May 1994, the Applicant attempted to utilize gambling in an effort to ameliorate his indebtedness. These concerns are heightened because the Applicant testified that, if admitted, he plans to reside and practice law in Las Vegas, a city that may facilitate this behavior. The Committee further feels that his explanation regarding his "maturing process" was simplistic and failed to recognize the severity of his behavior and the risk it poses for future Nevada potential clients. The committee feels the Applicant's stated decision to stop gambling may be more attributable to the fact that he simply lacks funds (his credit card lenders have refused to advance him any additional funds) rather than the previously mentioned "maturity process." The demonstration of such behavior as recently as eight months prior to the filing of his 1995 Application is in the committee's opinion, indicative of financial irresponsibility and raises serious concerns for the Committee for which the Applicant could offer no affirmative evidence of explanation or rehabilitation. Indeed, the Applicant testified on November 30, that he continued to "drop coins in the machines" after his July hearing in which this matter was discussed, at which he indicated he had stopped gambling.

9. The Committee has grave concerns regarding Applicant's ability to recognize his limits with respect to his finances which may easily be transferred to the handling of money and property entrusted to him by clients or others. Primarily the Applicant does not consider himself to be a problem gambler" and therefore has not investigated any counseling or support groups to attempt to overcome what the Committee believes may be a serious problem.

10. According to the Applicant's testimony, the Applicant accumulated a sum of $5,000 in gambling debt over a period of approximately ten months (from approximately June 1993 to May

94), averaging $500 per month. The Committee is greatly distressed that during this period of time, the Applicant knowingly had no ability to pay such debt in that he had previously displayed a pattern of unemployment and/or underemployment since February 1992 and that he had no reasonable expectation that he would be a practicing attorney in the State of Nevada in 1994, as he had previously withdrawn his Application in February 1994. The Applicant testified that his only full time employment during that time was from June 1993 until August 1993, and thereafter he began working part time for his ex-wife. Immediately prior to this period of time, from February 1992 to December 1992, Applicant was attending the American Graduate School of International Management, for which he obtained a student loan in the amount of $25,000 and stated in his Application that he "began using his credit cards to survive. " Then, from December 1992 until April 1993, Applicant stated that he was not able to secure employment in the Phoenix area and relocated to Las Vegas in May 1993. Review of his Application reflects no substantial full time employment since that time.

11. Also of concern to the Committee is the Applicant's personal involvement in several civil suits. Three suits involved foreclosures on mortgages, reflecting poorly on the Applicant's ability to demonstrate financial responsibility, and three suits allege malpractice claims against the Applicant.

12. In or around 1983, the Applicant and his then-wife acquired two investment properties in Louisiana, where Applicant was a practicing attorney. Applicant testified that he entered into an exchange agreement with a builder to exchange the two properties for a piece of residential property owned by the builder. Thus, by way of this agreement, the builder was to assume the mortgage of the two investment properties and the Applicant was to assume the mortgage on the residential property. The act of exchange, however, was never recorded and the Applicant failed to obtain a release for the mortgages on the investment properties and further failed to inform the bank that he had transferred title

negligent on his part to fail to verify that the exchange was recorded; nonetheless he would have remained contingently liable.

The builder then defaulted on the mortgages of the properties, and both properties were foreclosed upon. The properties were encumbered by two separate mortgages with different private mortgage insurance carriers ("PMI".) The PMI of one of the properties then sued the Applicant for a deficiency judgment of $113,018.78, together with interest. This suit was settled in September 1993 for $10,000. The Applicant testified that the deficiency of the other property was similar to the first. He alleges that a deficiency judgment was never filed in this case, and he believes that the statute of limitations has run, thereby relieving him of any liability.

13. The Applicant then went into default on the residential property acquired from the builder and offered a deed in lieu of foreclosure. He states that the deed in lieu was accepted as full payment and a deficiency was never filed.

14. Applicant was additionally a 1/5 owner in a property acquired by his mother which, he testified, was transferred to him and his siblings for tax purposes. When the mortgage went into default, the Applicant advised his siblings to let the home be foreclosed upon and they would then offer a deed in lieu of foreclosure. He further advised his siblings that it was unlikely that the Federal National Mortgage Association, the receiver to the lender, would file a deficiency judgment due to the small remaining deficiency. The deed in lieu was not accepted, and the Applicant maintains a contingent liability in this case in the event that a deficiency is pursued.

15. The Committee feels that the above facts, although mitigated somewhat by extenuating circumstances, are indicative of the Applicant's failure to demonstrate financial responsibility and further demonstrate some degree of professional negligence, particularly with respect to his failure to verify the recording of the exchange of his investment properties.

16. In addition to the civil suits involving foreclosure, the Applicant has been sued three times for malpractice. The Committee feels that the allegations set forth therein reflect negatively on the Applicant's character and fitness to practice law with respect to neglect of his professional obligations. A summary of these suits are set forth below.

The first suit, *William S. Ammons v. Powers, Vaughn & Douglas L. Nicholson*, was filed in 1985. In *Ammons*, Plaintiff alleged that Applicant represented him in a real estate transaction and failed to inform him that the property was encumbered with a collateral mortgage. This case was settled by applicant by payment of $15,000.

In the second suit, *Stanley and Marlene Cheatham vs. Powers, Vaughn and Clegg, Douglas Nicholson,. and John Dale Powers*, allegations were made that the Applicant failed to obtain a release from the lender in a property exchange releasing the Plaintiffs from contingent liability on the note. Applicant testified that because the Plaintiffs were the original mortgagors on the properties exchanged, when one of the parties to whom Plaintiffs exchanged the property defaulted on the note, Plaintiff was called upon by the mortgagee to pay the note. This suit was filed in 1990 and has been inactive since 1991. The applicant testified that the statute of limitations will expire in 1997 and believes that Plaintiffs have abandoned the case.

The final suit, *Dudley J. Boyer, Jr. vs. Douglas L. Nicholson et al.*, commenced in 1992. In this case, the Plaintiff originally filed suit against the applicant for malpractice because a prenuptial agreement prepared by the Applicant for the Plaintiff was determined to be void by the District Court. The Court of Appeals then reversed the verdict of the lower court, thereby eliminating the basis for the malpractice suit against the Applicant. The Plaintiff's ex-wife then filed suit against the Plaintiff, alleging that the prenuptial agreement was void due to duress. The court ruled in favor of the Plaintiff's ex-wife, thereby allegedly giving substance to the suit for malpractice against the Applicant on the basis that the Applicant failed to advise the Plaintiff of the risks of the contract being void because of duress. On September 13, 1995, this suit was dismissed with prejudice.

17. In addition to the above civil suits, the Committee feels that the applicant has engaged in further conduct that reflects negatively on his character and fitness to practice law; specifically, a potential abuse of legal process. On November 10, 1995, the Applicant provided the Committee with a copy of a lawsuit he filed against his ex-wife ("Defendant") on November 8, 1995, in Eighth Judicial District Court, Family Division, Department B, in the State of Nevada.

18. Said suit makes several allegations with respect to a divorce decree which was entered on November 10, 1992, effective January 10, 1993 in Los Angeles Superior Court, Los Angeles, California. Among these allegations, Applicant alleges that an agreement was entered into between the Applicant (a licensed California attorney) and his wife's then counsel that there would be no community property division at the time of the divorce action and furthermore that Defendant's counsel fraudulently secured a community property division detrimental to Applicant's community property rights.

19. Applicant further alleges that, without his knowledge, the Defendant was awarded Applicant's right, title, and interest in a corporation jointly owned by the Applicant and Defendant (admittedly operated by the wife), as well as Applicant's liability on a promissory note executed by the Applicant and Defendant in the amount of $120,000 incurred in the acquisition of the business. The Applicant states he was provided with an indemnity action against the Defendant only in the event that the Defendant defaulted on the note.

20. Additionally, Applicant alleges that on or about May 1993, during a time of extreme duress, Applicant actually signed a written agreement giving full force and effect to what he now claims was a fraudulently secured divorce decree.

21. Based upon these allegations, Applicant is requesting judgment from a Nevada Court to declare null and void the Los Angeles County Superior Court decree/partition of community property; and the agreement affirming the Los Angeles County Superior Court Decree on the grounds that they were executed under duress; and that Defendant be deemed to be in breach of both the Los Angeles County Superior Court Decree and the agreement affirming the decree.

22. The Applicant further supplied the Committee with a copy of a demand letter sent to KOMMY Corporation, the holder of the $120,000 promissory note, demanding that KOMMY "...TAKE IMMEDIATE ACTION TO FILE A LAWSUIT AGAINST DOROTHY AND ME (the Applicant) TO COLLECT ITS PROMISSORY NOTE IN FULL." When questioned as to this letter at the hearing, the Applicant testified that to date, no request or formal demand for payment has been issued by KOMMY Corporation requesting or demanding that he make payment on this note. Further, when questioned as to why he wrote the letter and filed the lawsuit, the Applicant testified that if KOMMY never exercises its right to collect on the note, Defendant not only has the business, but another $120,000 - which he characterized as "the best of both worlds."

23. This Committee must characterize this conduct as being in bad faith and motivated by an improper and vexatious purpose. It appears to the committee Applicant is seeking in an improper forum to obtain relief from a decree entered by a California court, to which Applicant originally entered an appearance, from which Applicant never pursued an appeal or other relief, to avoid liability on a debt which the debtor has not pursued against him, for the sole purpose of harming or otherwise adversely impacting his ex-wife.

24. The Committee believes, and the Applicant testified, that the information set forth in paragraphs 17, 18. 19, 20, 21 and 22 was submitted to the Committee in an attempt to demonstrate to the Committee the Applicant's financial responsibility by his

taking affirmative action to deal with the KOMMY note. To the contrary, the Committee believes that Applicant has demonstrated an abuse of legal process by requesting a Nevada Court to rule on and/or set aside the judgment of a California Court. Moreover, the Committee's review of the Answer and Counterclaim in this matter, demonstrates that as a result of this suit, the Applicant may incur a substantial amount of additional debt. Specifically, the Defendant alleges that the Applicant has failed to pay his portion of the $ 1 0, 000 judgment entered in 1993 in settlement of the previously mentioned action for foreclosure and deficiency judgment. Moreover, Defendant alleges that she loaned $8,508.57 and $6,991.55 directly to the Applicant for medical bills, automobile and travel expenses, to be repaid from Applicant's employment, a sum which allegedly has not yet been repaid.

24. At proceedings before the Committee on November 30, 1995, Applicant introduced exhibits Al-A4 for the Committee's consideration. Exhibits Al-A4 were introduced ostensibly to justify Applicant's failure to disclose certain arrests his 1994 Application, although they were disclosed in his 1995 Application. Exhibits Al-A4 are substantially as follows:

> A-1: copy of one page of Applicant's 1994 Application reflecting questions 30-38;
> A-2: copy of page 7 of California's Application for Admission with questions regarding arrests and convictions;
> A-3: copy of the definition of "Expungement of Record" copied from Black's Law Dictionary; and
> A-4: copy of a letter from the Louisiana Bar Application attesting to the fact that the Applicant's Application has been destroyed due to a file retention policy

25. The Applicant testified that though he had no recollection of his actual thought processes, had the words "expungement" or "sealment of records" been used in that question, he was certain he would have divulged his arrest for possession of marijuana and

possession of mescaline in his 1994 Application.

26. The Committee feels this attempted explanation was disingenuous and specious. Question 30 of the Applicant's 1994 Application asks if an applicant "...has ever been arrested, cited, indicted or tried for or convicted of any criminal charges ... regardless of the disposition of the charge..... On page 3 of the Application, the Applicant initialed a statement which signified that he understood that "...No court order or legal proceeding withholding adjudication, expunging the information required from any record, sealing the records....shall excuse less than full disclosure....."

27. The Committee does not feel that the Applicant intended to intentionally mislead the Board or the Committee by his failure to initially disclose these arrests on his 1994 Application. However, the Applicant's later attempt to justify his actions, which may have been inadvertent at the time, through this speculative and self-serving process raises serious concerns regarding the Applicant's ability to recognize and take responsibility for his actions and mistakes.

28. Exhibits A5-A9 are letters of reference from former clients and/or individuals who are familiar with the Applicant attesting to his good moral character and his proficiency as an attorney.

29. In conclusion, the Committee notes that although the Applicant is a licensed attorney in Louisiana and California, he has been unemployed or underemployed since approximately February 1992. The Applicant alleges that if given the opportunity to practice law in the State of Nevada, he would be able to resolve his financial difficulties and liquidate his debts. This argument, however, is not persuasive to the Committee as the Applicant's indebtedness was acquired during such time that the Applicant was a licensed attorney in two jurisdictions, and furthermore, that 5,000 of this debt was acquired due to taking cash advances on credit cards to gamble when the Applicant was already experiencing severe financial difficulties.

RECOMMENDATIONS

Based upon the foregoing findings and conclusions, the Committee recommends that the Applicant be denied with prejudice to the State Bar of Nevada. In making its Recommendation, the Committee recognizes that the purpose of character and fitness screening is to strive to not only protect the public and the administration of justice, but to strive to protect the reputation of the legal profession as well. In attempting to fulfill this purpose, the Committee must examine the totality of the conduct of an Applicant against the high ethical standards required of attorneys and counselors of law. The Committee feels that based upon the evidence presented, the Applicant has failed to meet this burden, by clear and convincing evidence as imposed by SCR 51(4), particularly with respect to neglect of his professional obligations as well as an abuse of legal process. Moreover, the Committee feels that the Applicant has failed to demonstrate, by clear and convincing evidence, financial responsibility as required by SCR 51(8). And, although the Applicant introduced several factors in mitigation and several letters of reference attesting to his professionalism, competency and moral character, this evidence, when weighed against the lack of evidence of rehabilitation, and the recency and seriousness are inadequate to meet the burdens imposed by SCR 51(4) and SCR 51(8). Indeed the Committee feels that some of the evidence the Applicant presented in mitigation actually proved to be aggravating in nature and goes far to persuade the Committee that the Applicant should not be allowed to practice law in the State of Nevada. This Recommendation of the Committee is based upon a unanimous vote.

Dated this 11th day of December, 1995
/s/ Keith L. Lee, Chair
Committee on Moral Character and Fitness

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: ADMISSION OF DOUGLAS L. NICHOLSON)
TO PRACTICE LAW IN NEVADA.)

No. 27926

Filed February 26, 1997

ORDER DENYING PETITION

This is a petition for review of the Committee on Moral Character and Fitness' recommendation to deny petitioner Douglas L. Nicholson's application for admission to the Nevada State Bar.

A hearing regarding Nicholson's application to practice law in the state of Nevada was held on July 13, 1995. At the hearing, the Committee requested that Nicholson submit additional documentation to the Committee and continued the hearing until after the bar examination. Nicholson took and passed the July 1995 bar examination. On November 30, 1995, a second hearing was held regarding Nicholson's application.

On December 14, 1995, the Committee submitted to this court its recommendation that Nicholson be denied admission to the Nevada State Bar with prejudice. The Committee found that Nicholson did not demonstrate that he is of good moral character and is willing and able to abide by the high ethical standards required of attorneys at law as required under SCR 51(4). The Committee further found that Nicholson failed to demonstrate financial responsibility pursuant to SCR 51(8). Nicholson filed a petition for review of the Committee's recommendation on February 28, 1996, and the Committee filed an answer on November 27, 1996.[1]

Nicholson contends that he was denied due process in these proceedings. First, Nicholson asserts that he was not given adequate notice of either hearing. SCR 59(1) provides that "[w]henever an applicant is required to appear before the board of bar examiners at a hearing, the applicant shall be entitled to 5 days' notice thereof if served personally with such notice, and to 10 days' notice if served by mail at the applicant's last-known address." SCR 59(2) states that the written notice shall include a general statement of the matters to be inquired into at the hearing. Although SCR 59 appears to contemplate that written notice will be given, we conclude that Nicholson was not prejudiced by receiving only verbal notice. We further conclude that verbal notice is analogous to personal notice and that the verbal notice Nicholson received two weeks in advance of the first hearing and one week in advance of the second hearing, was sufficient to satisfy the demands of due process.

Second, Nicholson contends that the timing of both hearings violated his right to due process. Although the timing of the first hearing, two weeks before the bar exam may have been an inopportune time for Nicholson, there is no evidence that the Committee purposefully delayed the hearing so as to inconvenience Nicholson. Further, at the close of the first hearing, the Committee requested Nicholson to provide further documentation and indicated that it was not ready to make a recommendation. Nicholson was specifically told that he would be permitted to take the bar exam, but that he would remain on a character and fitness hold. There is no evidence that the Committee purposefully delayed the timing of the second hearing. Nicholson passed the bar exam and was provided adequate time to provide the requested documentation. We therefore conclude that Nicholson was not prejudiced by the Committee's actions, and that the timing of the hearings implicate no viable due process concerns.

Finally, Nicholson asserts that one of the committee member's was not prepared for either hearing and that another Committee member should have been disqualified from

participating because (1) he was not present at the first hearing; and (2) Nicholson rendered an adverse arbitration award against a party who was represented by a member of the Committee member's firm. We conclude that Nicholson was not prejudiced by the participation of either of these Committee members.

Having reviewed the record of the instant proceeding, the pleadings, and the exhibits, we conclude that the evidence supports the Committee's findings. Accordingly, we approve the recommendation of the Committee. We deny with prejudice Nicholson's application for admission to practice law in the State of Nevada.

It is so ORDERED.[2]

Signed: Justices

Shearing
Springer
Rose
Young
Maupin

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[1]Subsequently, Nicholson submitted a reply to the Committee's answer. We have considered the reply in resolving this petition, and we direct the clerk of this court to file the reply.

[2]Although Nicholson has not been granted permission to file documents in this matter in proper person, see NRAP 46(b) , we have received and considered Nicholson's proper person documents. In light of this order, we deny as moot Nicholson's proper person motion to expedite received on February 9, 1996, and filed February 28, 1996. We further deny as moot Nicholson's proper person motion to expedite received on March 27, 1996.

[ARTICLE I]

Section. 8., clause 3.

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[ARTICLE IV]

Section 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[AMENDMENT I]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[AMENDMENT XIV]

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 21 - CIVIL RIGHTS
SUBCHAPTER I - GENERALLY

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

UNITED STATES CODE
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 21 - CIVIL RIGHTS
SUBCHAPTER I - GENERALLY

§ 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties: If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror: If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges: If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

NEVADA SUPREME COURT RULES

Rule 51. Qualifications of applicants for examination.

4. Demonstrate that the applicant is of good moral character and is willing and able to abide by the high ethical standards required of attorneys and counselors at law.

8. Demonstrate financial responsibility.

[As amended; effective December 1, 1994.]

Rule 56. Number and disposition of applications; approval by board of bar examiners.

(c) As provided in SCR 67, the admissions director shall reject the application if the applicant has previously taken the examination four times or has previously been denied admission with prejudice in this state for failure to meet the necessary character requirements.

[As amended; effective April 4, 1996.]

Rule 59. Notice.

1. Whenever an applicant is required to appear before the board of bar examiners at a hearing, the applicant shall be entitled to 5 days' notice thereof if served personally with such notice, and to 10 days' notice if served by mail at the applicant's last-known address.

2. The written notice to appear before the board shall include a general statement of the matters to be inquired into at the hearing and need not specify with particularity matters to be inquired into. If the hearing is concerned with character qualifications for admission, it is sufficient if the general notice contains a statement in substantially the following form: "Matters concerning your character and fitness qualifications for admission to practice will be inquired into at the hearing."

[As amended; effective December 11, 1991.]

Rule 67. Limitation on number of examinations and applications.

2. An applicant who has been denied admission with prejudice for failure to meet the necessary character requirements shall not thereafter again be permitted to apply for admission.

[As amended; effective December 1, 1994.]

Rule 76. State Bar of Nevada: public corporation; powers.

1. The State Bar of Nevada, a public corporation heretofore created by statute, shall govern the legal profession in this state, subject to the approval of the supreme court. The state bar is under the exclusive jurisdiction and control of the supreme court and is an association of persons now or hereafter regularly licensed to practice law in the State of Nevada.

2. The state bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives, make contracts, own, hold, use, manage and deal in and with real and personal property, subpoena witnesses for the purpose of aiding in cases of discipline, suspension or disbarment, or application for admission, and do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.

STATE BAR OF NEVADA

February 16, 1994

Mr. Dennis L. Nicholson
3111 S. Valley View #A-216
Las Vegas, NV 89102

Re: Returned Check for Application to State Bar of Nevada

Dear Mr. Nicholson:

Your check in the amount of $450.00 was returned to the State Bar unpaid with a notation that you had stopped payment on the check. If it is your intent to withdraw your application, you must follow the notification procedure in S.C.R. 56(4) (contained within your application package).

In addition, the Supreme Court Rules specifically provide that no refunds are to be given under any circumstances (S.C.R. 54(4)). Stopping payment on your check is not an acceptable method of withdrawal and will be a potential character and fitness issue in a later application to the State Bar of Nevada. Actual costs are expended by the Bar upon receipt of an application and these costs are not paid when an applicant stops payment on a check or when a check is returned for non-sufficient funds.

Please let me know your intentions regarding the check and your application to the State Bar.

Director of Admissions
Roger A. Jones

cc: Keith L. Lee, Chair, Committee on Moral Character & Fitness
Ronald D. Alling, Chair, Board of Bar Examiners
Janette Bloom, Clerk of the Court Supreme Court of Nevada

Douglas L. Nicholson
3111 S. Valley View #A-216
Las Vegas, NV 89102

February 24, 1994

Attn: Roger A. Jones
Director of Admissions
State Bar of Nevada
201 Las Vegas Blvd. Ste. 200
Las Vegas, NV 89101

RE: Withdrawal of Bar Examination Application

Dear Mr. Jones:

This acknowledges receipt of your letter dated February 16 wrongly addressed to DENNIS L. Nicholson which begs a response. What I found particularly disturbing was that stopping payment on my check "will be a potential character and fitness issue in a later application to the State Bar of Nevada." It seems most appropriate to examine the facts from the proverbial "reasonable man" perspective, or how the butcher, the barber, and the baker might perceive the character and fitness of the parties concerned. The pivotal issue is who should get the $450 application fee, regardless of any arbitrary and adhesionary rule that the bar should retain it by the mere filing of my application?

I undertook the expensive and laborious task of completing the bar application, an overly cumbersome process ostensibly designed to discourage attorney competition within the State of Nevada (compared to bar exam application requirements of other States, and considering that there is no provision for an attorney's exam, or grand fathering based on years of practice). Two days after hand delivering my application to your office, there was an unforeseen potential change in my personal circumstances. Your office was immediately contacted to determine the policy for withdrawal of an application and any application fee refund it was

distressing to learn that the State Bar of Nevada has no policy for refunds of fees under any circumstances, another provision which has a chilling effect on applications and competition. It was even more incredulous when the lady informed me that the heirs of a deceased applicant were even unsuccessful in suing for a refund. I began to seriously question such a policy and the character, fitness, and ethics of those who would promulgate and administer such a policy.

page 2, Mr. Jones

It would seem that the State Bar Association should, at a minimum, be held to the same ethical and character standards as a practicing attorney. It is not only unethical, but unlawful for an attorney to retain a fee which has not been earned. The same should be true for the State Bar. Your letter seems to indicate that the application fee of $450 was earned by the State Bar due to the costs (certainly only minimal inexpensive administrative costs) associated with the mere filing of my application, and that that amount is due, and should be paid even if my application is withdrawn. ("Actual costs are expended by the Bar upon receipt of an application and these costs are not paid when an applicant stops payment on a check..."). And if this amount is not paid, then this bears directly on my character and fitness for any future application to take the bar exam.

I don't think that the "reasonable man" would see it that way. In fact, I believe that the reasonable man would seriously question the character and integrity of the State Bar of Nevada to insist on an unearned fee of $450. Regardless, the $25 paid for the application itself should adequately compensate the State Bar for all of its costs expended. The bottom line is that the State Bar gave me a choice of either simply donating $450 to it, or to take action to protect my own financial interests, ergo the stop payment. Had I not stopped payment on my check, the State Bar would have reaped a windfall on an unearned fee, and it would ironically feel

justified in doing so under the auspices of a rule/regulation, regardless of how unconscionable. Let me suggest that the feelings expressed herein represent the feelings and concerns of all former applicants who withdrew their bar exam applications (with or without cause), as well as future applicants.

Please forward a copy of this letter to Mr. Lee, Mr Alling, and Ms. Bloom on my behalf since their addresses were not provided. It is hoped that this letter, will evoke, beyond any hostility toward me, a serious consideration about rectifying the way the State Bar of Nevada does business with its customers, the applicants, applicant attorneys, and attorneys in this State. Please accept this letter as a formal withdrawal to take the July Bar Exam.

Sincerely,

Douglas L. Nicholson